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# International Convention for the Protection of All Persons from Enforced Disappearance

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**Committee on Enforced Disappearances**

## Concluding observations on the report submitted by Kazakhstan under article 29 (1) of the Convention

**Addendum**

## Information received from Kazakhstan on follow-up to the concluding observations*

[Date received: 29 March 2017]

* The present document is being issued without formal editing.

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# Information from Kazakhstan on follow-up to the recommendations contained in paragraphs 12, 20 and 22 of the concluding observations of the Committee on Enforced Disappearances

**On paragraph 12 of the concluding observations of the Committee on Enforced Disappearances**

*The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible:*

*(a) Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty;*

*(b) Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.*

1. The International Convention for the Protection of All Persons from Enforced Disappearance, in article 2, defines enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons acting with the authorization or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or the disappearance of the person.

2. The current legislative framework governing arrest, detention and remand in custody excludes the possibility of a person being thus disappeared in Kazakhstan.

3. Under the new Code of Criminal Procedure, any information about a missing person that is received by the police, even if there is no element of a criminal act, is considered grounds for a pretrial inquiry, an investigation into the facts and prompt action in order to establish the whereabouts of the person (art. 180).

4. Therefore, enforced disappearance as defined under article 2 of the Convention is prohibited in Kazakhstan.

5. The Convention, in article 3, also contains provisions for acts of enforced disappearance committed without the involvement of the State, i.e., by an individual, for criminal purposes.

6. The criminal law in Kazakhstan is fully in keeping with the provisions of the Convention in this regard.

7. The Criminal Code, in both its previous and current forms, provides for the following penalties:

- For abduction (Criminal Code, art. 125): imprisonment of up to 15 years. Since the country's ratification of the Convention in 2009, a total of 888 abductions have been registered and 456 people have been criminally prosecuted.
- For illegal deprivation of liberty (Criminal Code, art. 126): imprisonment of up to 10 years. Since the country's ratification of the Convention in 2009, some 1,700 such cases have been registered and 827 people have been criminally prosecuted.

8. Enforced disappearance as defined under the Convention is also covered in the Criminal Code of Kazakhstan under the crime of trafficking in persons (Criminal Code, art. 128).

9. This crime is punishable by up to 15 years' deprivation of liberty. Since the country's ratification of the Convention in 2009, a total of 202 cases of human trafficking have been registered and 123 people have been criminally prosecuted.

10. However, in view of the Committee's recommendations, Kazakhstan intends to give the issue further consideration in its 2017-2021 plan of action on the recommendations issued at the Committee's tenth session (submitted for adoption to the Office of the Prime

Minister in document No. 1-3-7-57-1046 I, of 15 March 2017) and within the interdepartmental working group established under the Ministry of Internal Affairs (by the Ministry's Order No. 175, of 9 March 2017).

**On paragraph 20 of the concluding observations of the Committee on Enforced Disappearances**

*The Committee recommends that the State party adopt the measures necessary to guarantee in practice, from the outset of the deprivation of liberty, that all persons have access to a lawyer, and that their relatives or any other person of their choice and, in the case of foreigners, their consular authorities, are informed of the deprivation of liberty and of the place where the person is being held. It also recommends that the State party also guarantee in practice that any acts hindering the observance of these rights be adequately sanctioned.*

11. Arrest and detention are permitted only in cases provided by law and only with the authorization of a court, with the detainee given the right to challenge the detention. Without a court authorization, an individual may be held for no more than 72 hours (Constitution, art. 16 (2)).

12. All detainees are immediately informed of the grounds for their detention and of the criminal acts which they are suspected of having committed.

13. Under article 67 of the Code of Criminal Procedure, the participation of a defence lawyer is mandatory in criminal procedures if:

(1) The suspect, accused person, person standing trial, convict or acquitted person requests it;

(2) The suspect, accused person, person standing trial, convict or acquitted person has not reached the age of majority;

(3) The suspect, accused person, person standing trial, convict or acquitted person is unable, owing to physical or psychological impairments, to defend himself or herself;

(4) The suspect, accused person, person standing trial, convict or acquitted person does not have a command of the language in which the proceedings are conducted;

(5) The person is suspected or accused of a crime punishable by deprivation of liberty exceeding 10 years or by life imprisonment or the death penalty;

(6) The suspect, accused person, person standing trial or convict is held in custody as a preventive measure or is subjected to a compulsory psychiatric evaluation;

(7) There are contradictory interests between suspects, accused persons, persons standing trial, convicts or acquitted persons, one of whom has counsel;

(8) The proceedings include the participation of a representative of a victim (a private individual bringing charges) or a civil plaintiff;

(9) The proceedings include the participation of a procurator supporting charges brought by the State (as State prosecutor);

(10) The suspect, accused person, person standing trial, convict or acquitted person is outside Kazakhstan and refuses to appear before a criminal prosecution body or a court; or

(11) A plea bargain is requested or concluded.

14. In the cases covered by (1) to (6) and (10) of article 67 (1), listed above, the participation of a defence lawyer is ensured from the moment the person is identified as a suspect, accused person, person standing trial, convict or acquitted person; for (7), from the moment it is ascertained that there are contradictory interests between suspects, accused persons, persons standing trial, convicts or acquitted persons, one of whom has counsel; for cases covered by (8) and (9), from the moment the proceedings include the participation of a representative of a victim or a procurator; and for those covered by (11), from the moment

a plea bargain is requested by a suspect, accused person, person standing trial, convict or acquitted person.

15. In the circumstances covered by article 67 (1), if the suspect, accused person, person standing trial, convict or acquitted person, or the person's legal representative or another acting on the person's behalf does not request a defence lawyer, the body conducting the criminal proceedings must provide for the participation of a defence lawyer at the corresponding stage of the proceedings. The body issues an order to that effect, which is binding on the Bar association.

16. Furthermore, under articles 131 to 135 of the Code of Criminal Procedure, persons conducting criminal proceedings must notify procurators of the detention of suspects without delay, and no later than 24 hours from their arrest, and must also provide such information without delay to an adult member of their families or, in the absence of such family members, to other relatives or persons close to them, or to allow the suspects themselves to convey such notification.

17. The detention of a foreigner must be notified immediately or, failing that, within 24 hours, to the embassy, consulate or other representation of the State in question, through the Ministry of Foreign Affairs.

18. Denial of the right of a suspect's relatives to be informed of his or her detention and whereabouts is a criminal offence, as are unlawful refusal to provide information on the place where a person is being held in custody and the falsification of the time when an arrest record was drawn up or of the time of the actual arrest (Criminal Code, art. 414 (4)).

19. In connection with its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kazakhstan has undertaken to provide for conditions of detention in line with the requirements of the United Nations Standard Minimum Rules for Non-custodial Measures.

20. Special international experts from the United Nations and human rights organizations regularly monitor the activities of the special internal affairs units to check on compliance with the State's obligations.

**On paragraph 22 of the concluding observations of the Committee on Enforced Disappearances**

*The Committee recommends that the State party take the steps necessary to ensure that:*

*(a) All deprivations of liberty are entered in uniform registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;*

*(b) Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are adequately sanctioned.*

21. An electronic record-keeping system for persons visiting or brought before law enforcement bodies has been introduced in Kazakhstan. An order of the Procurator General approved the instructions on the electronic registration of persons brought before law enforcement bodies. The records include the date and time of arrival and the procedural status of the persons brought in.

22. The visitors' electronic registration system involves entering information about such persons into a database managed by the Committee for Legal Statistics and Special Records in the Office of the Procurator General.

23. Persons visiting law enforcement bodies (including eyewitnesses, witnesses, victims, suspects, accused persons and legal representatives of legal persons) are those who have been summoned or forced to appear before a law enforcement body to clarify their involvement in a criminal offence and wanted persons.

24. Moreover, a record book is kept of persons brought to internal affairs offices, and procurators are assigned to those offices to verify the grounds on which they are brought in and to receive complaints and take statements.

25. In the penitentiary system of Kazakhstan, records, including those relating to prisoners (suspects, accused persons and convicts), are kept by special records departments, units and groups.

26. In respect of convicts, this service is currently governed by two departmental regulations:

- The Instructions on the organization of the work of special records units in remand centres of the penal correction system of the Ministry of Internal Affairs, approved by the Minister of Internal Affairs by Order No. 565, of 19 October 2012;
- The Instructions on the organization of the work of departments, units and groups for the special records of correctional institutions of the penal correction system of the Ministry of Internal Affairs, approved by the Minister of Internal Affairs by Order No. 551, of 10 October 2012.

27. In order to improve the observance of prisoners' rights, by Order No. 107, of 13 February 2017, the Minister of Internal Affairs approved regulations on the registration of persons being held in correctional facilities (as at 17 March 2017, State registration of such persons is performed by the Ministry of Justice).

28. Work is ongoing in this area.